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June 30, 1998

Via HAND DELIVERY

Ms. Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

RECEIVED

JUN 30 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: **The Matter of Implementation of Section 255 of the  
Telecommunications Act of 1996, Access to Telecommunications  
Services, Telecommunications Equipment, and Customer Premises  
Equipment by Persons with Disabilities, W.T. Docket No. 96-198.**

Dear Ms. Salas:

Enclosed please find for filing on behalf of the Telecommunications Industry Association ("TIA"), an original and nine copies of TIA's Comments in the above-referenced proceeding.

Also enclosed is an additional copy of the Comments, which we ask you to date stamp and return with our messenger.

Respectfully submitted,



Steven K. Davidson

Enclosures

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048

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C.**

In the Matter of )  
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Implementation of Section 255 of the )  
Telecommunications Act of 1996 )  
 )  
Access to Telecommunications Services, )  
Telecommunications Equipment, and )  
Customer Premises Equipment )  
By Persons with Disabilities )

WT Docket No. 96-198

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**JUN 30 1998**

**COMMENTS OF THE TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

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Vice President, Government Relations  
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ASSOCIATION  
1300 Pennsylvania Avenue, N.W.  
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Washington, D.C. 20004

Dated: June 30 , 1998

## **EXECUTIVE SUMMARY**

The purpose of Section 255 is to provide increased access to telecommunications and to encourage ease of use of telecommunications products and services by persons with disabilities, to the extent “readily achievable.” TIA supports this goal. TIA believes the goals of Section 255 can be best accomplished in a competitive market rather than through intensive government regulation. The telecommunications market has been in fact a source of benefits for persons with disabilities. The telecommunications equipment and CPE markets are highly competitive which has caused TIA's members to manufacture an array of sophisticated telecommunications devices with increasing capabilities. The competitive telecommunications equipment and CPE markets also have had the effect of making telecommunications devices more accessible to and usable by persons with disabilities. In addition to features such as vibrating pagers; alphanumeric display pagers; speakerphone functionality; screens on cellular and PCS phones which allow an entity to receive text messages; and many other features which make telecommunications equipment and CPE more accessible to persons with disabilities, TIA members have reduced the size and cost of devices which has made such products more accessible to people with disabilities.

TIA believes that in adopting a structure for implementation of Section 255 the FCC should not impose unnecessary and unrealistic burdens upon the manufacturing community which will serve only to have a detrimental impact on the overall ability of manufacturers to continue to provide more features, functionality and capacity at lower prices. Excessive regulation which requires manufacturers to expend resources documenting decisions on why it

was not possible to incorporate accessibility features into devices covered by Section 255 will reduce the resources that can be devoted to developing new and innovative products, including products with more accessibility features than exist today. A framework for Section 255 implementation should encourage members of the disability community and the manufacturing community to work together to identify specific barriers to accessibility and, thereby accomplish the laudable goals of Section 255.

The FCC should adopt rules which allow manufacturers to use a product line approach to Section 255 rather than a product by product approach. In this regard, the Commission should allow manufacturers to apply the Access Board's 18 point "accessibility checklist" across product lines. Virtually all parties that have participated in the proceedings at the Access Board and in the NOI portion of this proceeding, agree that as a practical matter it is not "readily achievable" to make a universally accessible product since features that enhance accessibility for one disability, may decrease accessibility for other disabilities. A regulatory regime that allows manufacturers to devote resources to developing accessibility solutions to families of products with similar features, functionality and price, will ultimately result in greater accessibility being provided to a greater number of people with a wider variety of disabilities.

With respect to the statutory definitions, the FCC should adapt the definitions of "disability" and "readily achievable" taken from the ADA, to the telecommunications context. For example, the definition of "disability" should be interpreted to include only those persons with functional limitations that affect their ability to use telecommunications. Thus, while approximately 50 million people in the U.S. may have some type of disability, not all 50 million

people are precluded from accessing the full panoply of telecommunications services available today.

Similarly, the FCC should revise the Access Board's definitions of "accessibility," "compatibility," and "manufacturer" to avoid undesirable consequences and negative incentives that may not be apparent at first glance. For example, because it is not "readily achievable" to manufacture a product which meets all 18 points of the Access Board's accessibility checklist, "accessible" should be defined as telecommunications equipment and CPE which enhances the ability of a person with a disability to use telecommunications equipment or CPE by incorporating one or more of the factors enumerated in the Access Board's 18 point checklist.

Section 255 should be applied only to telecommunications services, as opposed to information services and only to telecommunications equipment and CPE to the extent the telecommunications equipment and CPE is being used in connection with a telecommunications service.

The FCC should adopt TIA's dispute resolution process instead of the FCC's proposed fast track process. The proposed fast track deadlines (FCC transmitting complaints within 1 day and manufacturers responding thereto within 5 days of the date the complaint was forwarded), are too short to lead to meaningful resolution of perceived accessibility problems. As a result, the fast track process is not conducive to resolution of complaints and will serve only to put parties in a defensive posture. More importantly, the fast track process will not result in increased accessibility. The FCC should require persons with disabilities who are directly aggrieved by the perceived lack of accessibility of a product to discuss the issue with the

appropriate manufacturer before involving the FCC. Under TIA's proposal the parties would have 60 days within which to resolve the issue or the matter can be taken up in a more traditional complaint process.

TIA agrees with the FCC that a contact point for Section 255 matters is necessary but asserts that the Commission should permit manufacturers flexibility in designating a contact point. TIA urges the FCC to adopt a standing requirement to ensure that frivolous complaints are not submitted. To ensure that the Commission's resources are not burdened and manufacturers do not have to respond to "stale" complaints, the FCC should impose a 6 month statute of limitations on the filing of complaints against manufacturers. To enable manufacturers to provide detailed and substantive responses to complaints, complainants should be required to provide detailed information about his or her disability as well as steps taken to obtain an accessible product.

In the context of defending against complaints, confidentiality is a critical concern to manufacturers since much of the information that might have to be submitted in a complaint proceeding would include highly proprietary and sensitive cost and financial information regarding a product or product pricing strategies. For example, when raising a "readily achievable" defense, information which would have to be submitted to prove a case might include product costs, electrical current requirements for certain features, ROM space required for certain features, licensing fees paid to others, technical details of operation and similar matters which, if put in the public domain would have devastating impact on a manufacturer's competitive position in the marketplace.

The FCC's current "complaint process" which permits a fast track complaint, informal dispute resolution, and formal dispute resolution is unjustifiably burdensome to manufacturers. The FCC's proposal could result in manufacturers being required to defend themselves in three separate actions. TIA proposes instead that the FCC adopt TIA's proposed dispute resolution process, and allow complainants to use a modified formal complaint process in which no discovery is allowed.

The FCC's proposal to rely on outside information in rendering decisions on fast track (and other) complaints is not presently viable. While there are persons who have many good ideas on how accessibility can be increased in the telecommunications context, there is virtually no expertise on whether it is "readily achievable" to incorporate such ideas into any individual manufacturer's product. The design and development process for telecommunications equipment and CPE is highly complex and results in numerous experts collaborating on the best manner to incorporate numerous features in a given product.

The FCC should not serve as a clearinghouse for accessibility information nor require manufacturers to submit general accessibility information for redistribution to the public and the FCC should not or give manufacturers a "seal or other imprimatur" on Section 255 compliance. Due to the large number of products introduced on a monthly basis, the FCC does not have the resources to keep such information up to date. The public might believe the act of distributing information is an acknowledgement that a manufacturer's product complies in all respects with Section 255 when that might not be the case. Since the marketplace will ensure that accessibility information will be distributed, the FCC should not devote its limited resources to such a project.

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.**

In the Matter of	)	
	)	
Implementation of Section 255 of the	)	
Telecommunications Act of 1996	)	
	)	WT Docket No. 96-198
Access to Telecommunications Services,	)	
Telecommunications Equipment, and	)	
Customer Premises Equipment	)	
By Persons with Disabilities	)	

**COMMENTS OF THE TELECOMMUNICATIONS  
INDUSTRY ASSOCIATION**

**I. INTRODUCTION.**

Pursuant to the provisions of Section 1.415 of the Commission's Rules, the Telecommunications Industry Association ("TIA") respectfully submits its comments in the above-captioned proceeding.<sup>1</sup> In support of its comments, TIA states as follows:

TIA is a national trade organization with membership of 900 large and small companies that provide communications and information technology products, materials, systems, distribution services and professional services in the United States and around the

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<sup>1</sup> *Implementation of Section 255 of the Telecommunications Act of 1996: Access to Telecommunications Services, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities, Notice of Proposed Rule Making*, WT Docket No. 96-198, FCC 98-55 (rel. April 20, 1998) (hereinafter "*NPRM*").

world. The association's member companies manufacture or supply virtually all of the products used in the global communications networks. TIA member companies have been in the forefront of the development of telecommunications equipment and CPE and have, thus, been an integral part of the telecommunications revolution that has had a dramatic and positive effect on the manner in which citizens conduct their lives.

As vigorous competitors in the hotly contested marketplace for telecommunications equipment and CPE fostered by the Commission's pro-competition policies, TIA members have engaged in substantial research and development to provide consumers with products with increasing capabilities at ever lower prices. The dramatic increase in use of communications devices of all types for a variety of voice and data services, for example, is the result of the efforts of TIA members. The technological developments resulting from TIA members' research and development efforts have served to benefit individuals with disabilities as well as the broader marketplace.

Advances in micro-technology components have permitted manufacturers to provide an increasing array of features for mass market products which serve to make such communications devices more accessible to and useable by individuals with disabilities. Vibrating pagers make it possible for persons with hearing disabilities to be alerted to incoming paging messages; display pagers make it possible for persons with hearing disabilities to receive messages; alphanumeric pagers make it possible for persons with hearing disabilities to read text messages rather than to receive only numeric messages; voice pagers make it easier for persons with vision impairments to hear messages; cellular, PCS, enhanced SMR and cordless phones

allow persons with mobility disabilities to be able to utilize the telecommunications network without having to use public phones or phones which may otherwise be located in inconvenient places; cellular, PCS and cordless phones often have visual displays and thus serve as devices which can receive short data messages; in the not too distant future, cellular and PCS telecommunications equipment and other CPE will be used to provide information about the user's location to emergency service providers, assisting individuals with functional limitations that make it difficult to access emergency services; wireless modems made specifically for use with computers and similar devices allow persons with hearing disabilities to use PCs to receive e-mails and faxes; voice recognition features permit calls to be initiated hands-free; speaker phone and other hands-free features incorporated into a wide variety of wireline and wireless CPE make it easier for persons with motor impairments to access telecommunications networks. Advances in technology also have allowed manufacturers to reduce the size and weight of CPE and at the same time lengthen the battery life of portable CPE, thus making it easier and more convenient for all persons, including persons with disabilities, to carry and use portable CPE in their everyday activities.

Perhaps most importantly, advances and innovation in technology, combined with a competitive marketplace, have caused the prices of communications devices, including CPE, to be driven dramatically downward towards cost. This has made a wide variety of devices manufactured by TIA members available to all segments of the public, including those persons whose disabilities may have otherwise resulted in lower earning power relative to society as a whole.

Features which enhance the accessibility of devices manufactured by TIA members did not commence with Section 255. As they have competed with each other for customers, manufacturers have developed new product features and, through the use of new technology, reduced the cost of providing older, more limited product features. In pursuing a strategy of differentiating their products – both from their competitors’ offerings and their own prior offerings – manufacturers have created products with unique features and combinations of features. In the course of pursuing a marketing strategy of product differentiation, manufacturers have introduced products with a variety of features which make them both more attractive in the marketplace and more accessible to individuals with disabilities. The following examples illustrate TIA members’ long history in providing products with features which make them more accessible. Voice pagers were first introduced in the late 1950’s; the speakerphone was introduced in the early 1960’s; the vibrating pager was first introduced in the mid-1970’s; visual displays on CPE were first used in the early 1980’s. Although some apparently believe that these accessibility-enhancing features were initially developed for people with disabilities and later made their way into the general marketplace, this is not the case. Rather, these features, initially developed for other market segments, proved to be useful for individuals with disabilities. For example, the vibrating pager, useful to people with impaired hearing, was initially developed so that factory workers in a noisy environment could be alerted to a page. Similarly, the speakerphone, useful to persons with motor impairments, generally was used in its early years by only a minority of executives to conduct group telephone calls in their offices. In both cases, TIA members, competing in the marketplace, invested in developing technology that

enables them to provide these features—initially high added-price options—in a wide variety of products at small or no price premiums. These examples demonstrate how manufacturers, when granted discretion as to how best to incorporate new features across their product lines, can achieve gains in technology that will benefit all consumers, both disabled and non-disabled alike.

The foregoing examples of some features of products now offered by TIA members which enhance the accessibility of their products to individuals with disabilities illustrates how manufacturers' investments in research and development have benefited all consumers, including those with disabilities—even without the obligations imposed on manufacturers by Section 255. It also demonstrates how allowing the highly competitive marketplace to operate freely has operated to enhance the accessibility of telecommunications equipment and CPE—a process that the Commission's implementation of Section 255 should encourage.

Moreover, the foregoing examples of product features to enhance accessibility is inconsistent with the notion that there has been a significant failure of the marketplace to make telecommunications equipment and CPE accessible, to the extent that it is “readily achievable” to do so. Two of the examples often cited as evidence of such marketplace failures—the interference of digital wireless telephones with some hearing aids and the incompatibility of digital wireless services and CPE with TTY/TDD devices—are rather the inevitable result of old technologies being exposed to radically new and advanced technologies. Some compatibility issues present very challenging technical problems which may not be amenable to solution, no

matter what the regulatory incentives or what time, effort, and resources are expended to solve them based, in part on the continued use of old technology.

Intrusive government regulations which impose unnecessary and unrealistic burdens upon the manufacturing community will serve only to have a detrimental impact on the overall ability of manufacturers to continue to provide more features, functionality and capacity at lower prices.<sup>2</sup> Excessive regulation which requires manufacturers to expend substantial resources documenting decisions on why it was not possible to incorporate accessibility features into devices covered by Section 255 does not serve the public interest since that will reduce the resources that can be devoted to developing new and innovative products, including products with more accessibility features than exist today.

In making a decision on a framework for Section 255 implementation, it is also incumbent on regulators to carefully study the factual premises on which many arguments are based. TIA does not dispute the fact that approximately 50 million people or 25% of the population of the United States has some type of disability. It does dispute the implication that all Americans with disabilities are unable to use telecommunications equipment and CPE. In fact, there are a great many persons with disabilities who are not only fully able to use all telecommunications equipment and CPE manufactured today, but who can more easily use telecommunications networks as a direct result of the innovation that has been accomplished by

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<sup>2</sup> See generally Charles L. Jackson, Ross M. Richardson & John Haring, Strategic Policy Research Inc., *An Evaluation of the Access Board's Accessibility Guidelines*, attached as Appendix A (hereinafter "SPRI Study").



TIA members. For example, a person whose legs are paralyzed and may be confined to a wheelchair can carry a cellular or PCS phone with them and have total access to the full panoply of telecommunications services without having to be concerned about the height of a payphone or winding his or her way through narrow hallways or corridors to gain access to a telephone instrument. In fact, the demonstrations at the Commission's April 2, 1998 Open Meeting at which the instant NPRM was voted, clearly demonstrated that even in the absence of Section 255 and implementing regulations being in place, the marketplace is working to meet the needs of persons with disabilities. Some needs were met by low-cost, mass market products like speakerphones. Other needs were met by highly specialized products like the Liberator and the TTY produced by small innovative manufacturers with specialized expertise.

Careful examination of the conclusions of the Access Board are in order inasmuch as accessibility for the rapidly changing and evolving telecommunications arena is substantially different than for architectural barriers with which the Access Board had prior experience. Congress clearly recognized this by requiring the Access Board to develop guidelines for telecommunications equipment and CPE "in conjunction" with the FCC. Thus, the Commission's tentative conclusion that it must give "substantial weight" to the conclusion of the Access Board<sup>3</sup> is not only unsupported by Section 255 itself, but is contradicted by the express language of the statute which gives the FCC co-equal responsibility in developing guidelines. The FCC should not automatically defer to the Access Board in all matters relative to accessibility.

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<sup>3</sup> NPRM ¶ 30.

TIA members take seriously their public responsibility to make telecommunications equipment and CPE accessible to the extent it is "readily achievable" to do so. TIA has been an active participant in the collaborative process in which representatives of industry, the disabled community, and government agencies have explored how best to implement Section 255. An executive with TIA served as Co-Chair of the Telecommunications Access Advisory Committee ("TAAC") formed by the Architectural and Transportation Barriers Compliance Board ("Access Board"). A number of TIA's members actively participated in and were members of the TAAC. TIA and numerous members submitted comments in the Commission's Notice of Inquiry<sup>4</sup> ("NOI") on Section 255 implementation as well as the Access Board's NPRM.<sup>5</sup> TIA and its members have had meetings with the staff of the Wireless Bureau and the Commission's Disabilities Task Force in an effort to communicate the views of its members. The staff of former Chairman Hundt specifically requested that TIA develop a proposed regulatory framework which might be used as a starting point for the development of a consensus agreement between manufacturers and the disability community on the best manner to implement Section 255.<sup>6</sup> Despite legitimate differences in opinion TIA may have with others who have interests in Section 255, TIA does not doubt the sincerity of those with different views

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<sup>4</sup> *In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment by Persons With Disabilities, Notice of Inquiry*, WT Docket No. 96-198, FCC 96-382 (rel. Sept. 19, 1996).

<sup>5</sup> Architectural and Transportation Barriers Compliance Board Telecommunications Act Accessibility Guidelines *Notice of Proposed Rulemaking*, 62 Fed. Reg. 19178 (April 18, 1997).

<sup>6</sup> TIA's proposal, dated December 1997, is attached as Appendix B.

on the subject, including members of the Commission and its staff. Neither should the Commission or persons with disabilities doubt the sincerity of the manufacturing community to comply with the spirit and the letter of the law.

In these comments, TIA hopes to demonstrate to the Commission and members of the disability community that a regulatory framework designed to encourage members of the disability community and the manufacturing community to work together is likely to result in more accessibility features being made available in a wider variety of products than would be the case if an unrealistic regulatory framework is implemented as a result of misperceptions of the state of the market and unrealistic views of the ability of manufacturers to make every product accessible to every disability.

## **II. THE FCC SHOULD PERMIT MANUFACTURERS TO EXERCISE DISCRETION IN INCORPORATING ACCESSIBILITY FEATURES ACROSS PRODUCTS WITHIN A PRODUCT LINE.**

TIA believes the most important decision the FCC will make in response to this *NPRM* is whether Section 255 applies on a product-by-product basis to each piece of telecommunications equipment and CPE, or whether it applies instead to lines or families of products with similar features, functions, and price. The FCC's *NPRM* provides no clear guidance as to how this issue will be resolved.

**A. A Product Line Approach Is The Key To Enhanced Accessibility.**

In the *NPRM*, the FCC proposes to require manufacturers to conduct an assessment of whether it is “readily achievable” to incorporate accessibility (defined by the Access Board to include each item on an 18 point “checklist”) into each and every product.<sup>7</sup> At the same time, the FCC recognizes that “the ideal of full accessibility is generally limited by feasibility, expense, or practicality,” in other words, by what is “readily achievable.”<sup>8</sup> The “full accessibility” “ideal” that the FCC recognizes cannot be achieved within the parameters of the “readily achievable” standard is a piece of telecommunications equipment or CPE that is accessible to all persons with all disabilities.

Based on this implicit recognition of the practical reality that no product can be accessible to everyone, the FCC acknowledges in the *NPRM* that:

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<sup>7</sup> *NPRM* ¶¶ 168-69. The FCC quotes the Access Board for the proposition that: “the assessment as to whether it is or is not readily achievable [to provide accessibility in every product] cannot be bypassed simply because another product is already accessible.” *NPRM* at ¶ 169 (quoting Access Board Order, 63 Fed. Reg. at 5611). The FCC proposes to adopt the Access Board’s definition of “accessibility,” which comprises an 18 point checklist of accessible product functions which must be assessed independently. The independent assessment is whether each of the 18 criteria is readily achievable and therefore required under Section 255. In reality, the Access Board’s checklist contains more than 18 criteria: for example, in addition to the 18 criteria listed, the Access Board included a requirement that “[t]elecommunications equipment and customer premises equipment . . . pass through cross manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide telecommunications in an accessible format.” See *NPRM* ¶ 75; *NPRM* App. C at C5. Thus, the 18 point checklist could actually be considered “18 point-plus.” For purposes of this document, reference to the “18 point checklist” includes the 18 points adopted by the Access Board plus the others described above.

<sup>8</sup> Feasibility, expense, and practicality are the three components of the “readily achievable” definition proposed by the FCC. *NPRM* ¶ 100.

**In the marketplace, providers must decide what features to include and what features to omit. We believe it is reasonable for an informed product development decision to take into account the accessibility features of other functionally similar products the provider offers,** provided it can be demonstrated that such a “product line” analysis increases the overall accessibility of the provider’s offerings.<sup>9</sup>

This statement by the FCC highlights the importance of granting manufacturers discretion to determine how to incorporate accessibility features into their products.

TIA agrees that discretion on the part of manufacturers is essential to gaining overall increased accessibility. However, TIA believes that the FCC’s proposal to require manufacturers to consider the Access Board’s 18 point checklist on a product-by-product basis does not leave manufacturers sufficient discretion to achieve meaningful gains in accessibility. TIA therefore strongly supports consideration of the 18 point checklist across an entire product line, as opposed to each and every product. In practice, this would mean manufacturers would attempt to provide, for example, at least one product in a product line that incorporated accessibility features for individuals with hearing impairments, at least one product that incorporated accessibility features for individuals with vision impairments, at least one product for individuals with mobility impairments, and so on.

A product line approach is based on the practical reality that no one product can be accessible to everyone; it will, in TIA’s view, maximize the resources that are dedicated to

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<sup>9</sup> *NPRM* ¶ 170 (emphasis added).

accessible product design and development, as opposed to documentation and defending complaints.

TIA commends the FCC for recognizing that, in some circumstances, a manufacturer should be deemed in compliance with Section 255 if it makes a “similar product” that is accessible.<sup>10</sup> Rather than placing primary emphasis on a *defense*, which will come into play only after a complaint is filed, the FCC should recognize the legitimacy of a product line approach to compliance “up front” in defining the scope of manufacturers’ obligations under Section 255. Manufacturers will be reluctant to rely upon an uncertain similar product defense and therefore are unlikely to adopt flexible approaches to increasing accessibility. Instead, manufacturers will take the more certain product-by-product approach and argue that it was not “readily achievable” for at least some functional limitations in virtually every case.

If the FCC were to adopt an “up front” approach to Section 255 that permitted each manufacturer to provide a range of functionally equivalent, comparably priced products that are accessible to those with different disabling conditions, the FCC would create incentives for product differentiation, which is critical to increased accessibility. A product line approach to compliance, which recognizes and endorses the need for manufacturers to exercise discretion to increase accessibility, permits greater flexibility for a manufacturer to work within the limits of what is “readily achievable.” A product line approach would permit a manufacturer to include more accessibility features to accommodate a particular type of disability into selected products.

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<sup>10</sup> *See id.*

For example, a manufacturer seeking to provide access to persons with partial hearing loss could include enhanced audio, a speaker jack, and a vibrating feature in a few cellular phones, rather than provide enhanced audio only in every phone. Such an approach might be preferable to consumers – both consumers with disabilities *and* non-disabled consumers who need similar features, because, for example, they work in a noisy environment.

In this way, a product line approach to compliance could result in the provision of more meaningful levels of access for particular functional limitations in a targeted group of products, rather than a very superficial level of access in virtually all products. This example demonstrates why the FCC should avoid adopting the excessively inflexible approach to accessibility contained in the *NPRM*.

**B. The FCC’s Proposal To Require A Product-By-Product Assessment Is Inconsistent With The Practical Reality That No Single Piece Of CPE Can Be Accessible To Everyone.**

Throughout the Section 255 implementation process, manufacturers, persons with disabilities, the Access Board, and the FCC have acknowledged that it is not possible now, and probably not ever, to manufacture a piece of CPE that is accessible to every person with a disability. Different functional limitations generate different, potentially conflicting accessibility needs, and even within a single disability, access needs can vary widely. Moreover, as a practical matter, universal access cannot be accomplished “without much difficulty or expense,” and therefore, is neither “readily achievable” nor required by Section 255.<sup>11</sup> Consequently, as

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<sup>11</sup> 42 U.S.C. § 12181(9) (definition of “readily achievable”).

the TAAC recognized, “because no single interface design will accommodate all disabilities, companies **must use discretion in choosing** among accessibility features.”<sup>12</sup>

While recognizing that universal access is practically impossible, the FCC has essentially defined the accessible telecommunications equipment and CPE as a universally accessible product. The FCC proposes to adopt the definition of accessible developed by the Access Board.<sup>13</sup> The Access Board’s 18 point checklist definition relates to the accessibility of product inputs, outputs, displays, mechanical and control functions for a variety of functional limitations and combinations of functional limitations.<sup>14</sup> Under the Access Board’s definition of accessible each of the 18 items on the checklist is mandatory, requiring a manufacturer to perform an independent “readily achievable” calculus for each item.<sup>15</sup>

The FCC proposes to adopt this definition and to apply it to each and every product, even though it is not “readily achievable” now, and probably not ever, for a manufacturer to make a single piece of telecommunications equipment or CPE that satisfies this definition of accessible.<sup>16</sup> TIA supports use of the 18 point checklist; however, it believes the

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<sup>12</sup> *NPRM* ¶ 15 (citing TAAC Final Report § 5.2.1 at 20) (emphasis added).

<sup>13</sup> *NPRM* ¶¶ 74-75; Access Board Guidelines §§ 1193.41, 1193.43.

<sup>14</sup> Access Board Guidelines §§ 1193.41, 1193.43.

<sup>15</sup> See *NPRM* ¶ 75 (requesting comment on this proposal). TIA proposes an alternative definition of accessible in Section III.B.4. *infra*. TIA’s alternative definition, though preferable to that proposed by the FCC, alone does not remedy the problem of forcing manufacturers to defend their inability to achieve the impossible. Taken together, TIA’s proposed definition of accessible and a product line approach to compliance could remedy this problem.

<sup>16</sup> For wireless CPE, such as cellular phones and pagers, for example, universal access would be extremely difficult, if not impossible. The popularity of these products depends upon  
(Continued ...)



application of the checklist over an entire product line is the only realistic approach to achieving overall accessibility.

**C. The FCC's Proposal Requires Manufacturers To Defend, Through A Series Of Piecemeal Complaints, Their Inability To Achieve The Impossible – A Universally Accessible Product.**

In spite of the unanimous recognition that, as a practical matter no product can be accessible to everyone, and that manufacturers will need to exercise discretion in choosing (a) among features to enhance access; and (b) the products into which they are incorporated, under the FCC's proposal, manufacturers remain vulnerable to complaints about the accessibility of every product to every person with every disability. While recognizing that manufacturers cannot produce universally accessible products, the FCC's proposal would permit a series of piecemeal complaints based on different functional limitations and needs that would effectively require manufacturers to defend their inability to achieve the impossible – a universally accessible product – not only once, but over and over again.

Under this regime, manufacturers, even those who attempt to comply with Section 255 in good faith, are constantly on the defensive. A manufacturer receives no safe harbor from

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portability and compactness. Even if it were technologically possible to design a universally accessible wireless product, it is virtually certain that incorporating accessibility features into that product to accommodate all disabilities would fundamentally alter the nature of that product by fundamentally increasing its size. Such a fundamental alteration would not be required by Section 255. *See* Section III.D.4., *infra*.